



construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

\* \* \*

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.<sup>1</sup>

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

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<sup>1</sup> Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 F.C.C.R. 11,064 (May 27, 1999); (Memorandum Opinion and Order) 16 F.C.C.R. 1247 (January 8, 2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re: Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002).

### **The March 24, 2003 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204, public notice of the Hearing in this matter was issued by the Hearing Officer on March 11, 2003, and a notice rescheduling the Hearing was issued on March 12, 2003. No persons sought intervention prior to or during the Hearing. At the Hearing held on March 24, 2003, Keith Carter, President of Ring Again, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. April A. Ingram, Esq., of Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, Nashville, Tennessee 37219-8062, appeared on behalf of Ring Again. Upon Ring Again's conclusion of proof in its case, the Hearing Officer granted Ring Again's *Application* based upon the following findings of fact and conclusions of law:

#### **I. Ring Again's Qualifications**

1. Ring Again was incorporated under the laws of Texas on September 9, 1997, and was qualified to transact business in Tennessee on November 10, 2000.
2. The complete street address of Ring Again's corporate service provider is 4302 Ross Avenue, Dallas, Texas 75204. The telephone number is (214) 887-1212 and facsimile number is (214) 887-1993.
3. The *Application* and supporting documentation in this record indicate that Ring Again has the requisite technical and managerial ability to provide competing local telecommunications services within the State of Tennessee. Specifically, Ring Again's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Ring Again has the necessary capital and financial ability to provide the services it proposes to offer.

5. Ring Again has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. Proposed Services**

Ring Again intends to provide facilities-based local exchange telecommunications services, including exchange access telecommunication services, within the State of Tennessee.<sup>2</sup>

## **III. Permitting Competition to Serve the Public Convenience and Necessity**

Upon review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Ring Again's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

## **IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program**

1. Ring Again has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

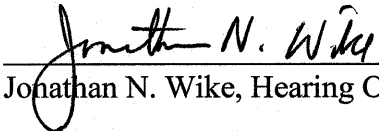
2. Ring Again has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

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<sup>2</sup> By Order dated April 3, 2001, in Docket No. 01-00137, Ring Again was granted authority to provide operator services and/or resell telecommunications services on an intrastate basis.

**IT IS THEREFORE ORDERED THAT:**

1. The *Application* of Texas HomeTel, Inc., d/b/a 877 Ring Again is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.

  
Jonathan N. Wike, Hearing Officer